

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: §
James Douglas Butcher § CASE NO. 23-34075-H4
§
§
Debtor § Chapter 13

TRUSTEE'S MOTION TO DISMISS OR CONVERT

NOTICE PURSUANT TO LOCAL RULE 9013

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THIS MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS MOTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

IF A TIMELY RESPONSE IS FILED, A HEARING WILL BE HELD ON JANUARY 22, 2024 AT 9:00 AM IN THE U.S. COURTHOUSE, 515 RUSK, COURTROOM 401, 4TH FLOOR HOUSTON, TEXAS.

TO THE HONORABLE U.S. BANKRUPTCY JUDGE:

David G. Peake, Chapter 13 Trustee (“Trustee”), in the above styled case, files this Motion to Dismiss and in support thereof would show the following:

1. A Chapter 13 voluntary bankruptcy petition was filed by James Douglas Butcher (“Debtor”) on October 23, 2023. Debtor filed his Schedules and Statement of Financial Affairs, on November 15, 2023 [docket no. 12].
2. The Trustee files this motion because the Debtor is ineligible for Chapter 13 relief. Pursuant to 11 U.S.C. §109(e), persons seeking relief under Chapter 13 must have debts within the statutorily defined allowable debt limits, more specifically:

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than \$2,750,000 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than \$2,750,000 may be a debtor under chapter 13 of this title.

Additionally, eligibility for relief is determined on the date of filing the petition; therefore, Debtors are not eligible to be debtors under Chapter 13 of the Bankruptcy Code. *In Re Nikoloutsos*, 199 F. 3d 233 (5th Cir. 2000); *see also In Re Hatzenbuehler*, 282 B.R. 828 (2002). In *Hatzenbuehler*, the Court's language specifically states that “[i]f a debt is ‘owed’ on the date of the filing of the petition and is liquidated and not contingent, it must be counted in analyzing a debtor’s eligibility for chapter 13.” *Id.* at 834.

3. Based on Debtor's uncontested Schedules filed on November 1, 2023, [docket no. 12], his total non-contingent and liquidated debt is listed as \$4,402,865.44. This amount of debt exceeds the statutory limitation of \$2,750,000.00, thereby, making Debtor ineligible for Chapter 13 relief.

4. The Chapter 13 Plan must be amended to provide for the claims of the secured and priority Creditors in full within the terms of the Plan. The debtor failed to provide tax appraisals for all real property to the Trustee. The debtor failed to amend Schedule I to list all of wife's income. The Debtors have caused unreasonable delay that is prejudicial to the Creditors.

Wherefore, the Trustee requests this Court to dismiss this case and to grant him such other and further relief to which he may be entitled.

Respectfully submitted,

David G. Peake, Chapter 13 Trustee

By: /s/ Richard W. Aurich, Jr.
TX Bar No. 00792339
9660 Hillcroft, Suite 430
Houston, TX 77096
Tel: 713-283-5400

Fax: 713-852-9084
Attorney for David G. Peake, Chapter 13 Trustee

CERTIFICATE OF SERVICE

A copy of foregoing Motion to Dismiss was served as indicated on December 22, 2023, upon the following:

James Douglas Butcher
480 Kirby Rd.
Taylor Lake Village, TX 77586

Reese W. Baker CM/ECF electronic delivery
950 Echo Ln, Ste 300
Houston, TX 77024

/s/ Richard W. Aurich, Jr.

Debtor's Attorney of Record:
REESE W BAKER
BAKER & ASSOCIATES
950 ECHO LANE SUITE 300
HOUSTON, TX 77024

AIS PORTFOLIO SERVICES LLC
ATTN: FORD MOTOR CREDIT COMPANY LLC
DEPT
4515 N SANTA FE AVE
OKLAHOMA CITY, OK 73118

CAPITAL BANK
10304 I-10 EAST
HOUSTON, TX 77029

CAPITAL ONE
6101 FAIRMONT PARKWAY, STE C
PASADENA, TX 77504

CAPITAL ONE
PO BOX 60519
CITY OF INDUSTRY, CA 91716

CLEAR CREEK INDEPENDENT SCHOOL
DISTRICT
C/O MELISSA E VALDEZ
PERDUE BRANDON FIELDER COLLINS & MOTT
LLP
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HOUSTON, TX 77008

CLEAR CREEK ISD TAX OFFICE
2425 E MAIN
LEAGUE CITY, TX 77573

CLEAR LAKE CITY WATER AUTHORITY
900 BAY AREA BLVD
HOUSTON, TX 77058

FROST BANK
PO BOX 1600
SAN ANTONIO, TX 78296

JOHN RESENDEZ
425 SOLEDAD ST STE 600
SAN ANTONIO, TX 78205-1558

Debtor:
James Douglas Butcher
480 Kirby Rd
Taylor Lk Vlg, TX 77586-5201

BARRETT DAFFIN FRAPPIER TURNER & ENGEL
LLP
4004 BELT LINE ROAD SUITE 100
ADDISON, TX 75001

CAPITAL BANK
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CAPITAL ONE
1680 CAPITAL ONE DR
MCLEAN, VA 22102

CHASE MORTGAGE
PO BOX 78420
PHOENIX, AZ 85062

CLEAR CREEK ISD
PO BOX 799
LEAGUE CITY, TX 77574-0799

CLEAR LAKE CITY WATER AUTHORITY
C/O MELISSA E VALDEZ
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HOUSTON, TX 77008

FORD CREDIT
PO BOX 650575
DALLAS, TX 75265

HARRIS COUNTY
PO BOX 4622
HOUSTON, TX 77210

LINCOLN AUTOMOTIVE FIN
PO BOX 542000
OMAHA, NE 68154

MERCEDES-BENZ CREDIT
PO BOX 685
ROENOKE, TX 79262

PASADENA INDEPENDENT SCHOOL DISTRICT
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PASADENA, TX 77501-1318

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REESE W BAKER
BAKER & ASSOCIATES
950 ECHO LANE SUITE 300
HOUSTON, TX 77024

SAMS CLUB
170 ELECTION RD
DRAPER, UT 08402

SAVINGS ACCOUNT
, TX

SHELL FCU
ATTN: BANKRUPTCY DEPARTMENT
PO BOX 578
DEER PARK, TX 77536

SHELL FEDERAL CREDIT UNION
PO BOX 578
DEER PARK, TX 77536

STELLER BANK
9 GREENWAY PLAZA SUITE 110
HOUSTON, TX 77046

SYNCB/LOWES
PO BOX 965060
ORLANDO, FL 32896-5060

SYNCHRONY BANK/SAMS
PO BOX 965060
ORLANDO, FL 32896

SYNCHRONY-LOWES
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DRAPER, UT 84020

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HOUSTON, TX 77008

TXU/TEXAS ENERGY
PO BOX 650700
DALLAS, TX 75265

WELLS FARGO BANK, N.A.
PO BOX 14487
DES MOINES, IA 50309

WEYCER KAPLAN PULASKI & ZUBER
24 GREENWAY PLZ STE 2050
HOUSTON, TX 77046

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

James Douglas Butcher

DEBTOR

§ CASE NO. 23-34075-H4
§
§
§
§
§ CHAPTER 13

ORDER OF DISMISSAL

1. On the chapter 13 trustee's motion, this case is dismissed. The Court's reasons for dismissal were stated on the record in open court.
2. The deadline for filing an application for an administrative expense in this case is set at 21 days following entry of this order. The deadline for filing a motion for allowance of a claim arising under § 507(b) in this case is also set at 21 days following entry of this order .
3. If an application for allowance of professional fees and expenses has previously been filed in this case , the applicant is not required to file a new application for allowance of administrative expenses under § 503, if the new application only seeks allowance of the same professional fees and expenses previously requested.
4. Any prior order directing an employer or other person to pay funds to the chapter 13 trustee is terminated. Any prior order authorizing an ACH or other means of electronic payment is terminated.
5. The Court finds good cause to direct the payment of funds held by the chapter 13 trustee at the time of entry of this Order as follows:
 - (a) First, the balance on hand in the Emergency Savings Fund will be paid to the Debtor(s);
 - (b) Second, to any unpaid chapter 13 trustee's statutory compensation;
 - (c) Third, the balance on hand in the Reserves for ad valorem taxes , to the holder of the claim secured by the senior security interest against the property for which the Reserves were established;
 - (d) Fourth, the balance in any other Reserve account to the Debtor;
 - (e) Fifth, to any unpaid payments mandated to be made by the Trustee under a prior Court order, including but not limited to any mandated adequate protection payments;
 - (f) Sixth, to pay any unpaid fees to Debtor(s)' attorneys and to reserve for any filed applications for which no order has yet been entered; and
 - (g) Seventh, to the Debtor(s).

Any party-in-interest objecting to the “for cause” distributions under this paragraph 5 must file an objection within 14 days of entry of this Order. The Chapter 13 Trustee will defer making distributions under this paragraph 5 until the next ordinary disbursement date following the later of (i) 22 days following entry of this Order; or (ii) entry of an order resolving any timely filed objection.

Dated: _____

CHRISTOPHER M LOPEZ
United States Bankruptcy Judge